

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X
FREDDY RODRIGUEZ, on his behalf
and on behalf of others similarly situated,

Plaintiff,

Case No. 08-cv-8304 (KMW)

ANSWER

-against-

**BERGEN DISCOUNT PLUS, INC.,
WILLIS DISCOUNT STORE, ERROL
MARKS**, an individual, **MIKE MEMON**,
an individual, and **MUHAMMED
DORIA**, an individual,

Defendants.

-----X
Defendants Iqbal Memon and Muhammed Doria, (“Defendants”) by and through their
attorney, Richard D. Lamborn, hereby answer the Complaint herein, as follows:

I

ADMISSIONS AND DENIALS

1. Defendants admit the allegations contained in paragraphs “10,” “11,” “12,” and “13” of the Complaint.
2. Defendants lack information sufficient to form a belief as to the truth or veracity of the allegations contained in paragraphs “1,” “2,” “9,” “15,” “16,” “21,” “22,” “25,” “26,” “27,” “28,” “29,” “30,” “31,” “32,” “41,” “42,” “43,” “52,” “53,” “54,” “55,” “56,” “57,” “58,” “59,” “68,” “70,” “75,” “78,” “79,” “84,” “89,” “92,” “93,” “97,” “98,” “99,” “110,” “111,” “112,” “117,” of the Complaint and therefore deny the same.

3. Defendants deny the allegations contained in paragraphs “3,” “4,” “5,” “6,” “7,” “8,” “17,” “18,” “19,” “20,” “23,” “24,” “33,” “34,” “35,” “36,” “37,” “38,” “39,” “40,” “44,” “45,” “46,” “47,” “48,” “49,” “50,” “51,” “60,” “61,” “62,” “63,” “64,” “65,” “66,” “67,” “69,” “71,” “72,” “73,” “74,” “76,” “77,” “80,” “81,” “82,” “83,” “85,” “86,” “87,” “88,” “90,” “91,” “94,” “95,” “96,” “100,” “101,” “102,” “103,” “105,” “106,” “107,” “108,” “109,” “113,” “114,” “115,” “116,” “118,” “119,” “120,” “122,” and “123” of the Complaint.
4. Defendants lack information sufficient to form a belief as to the truth or veracity of the allegation contained in paragraph “14” as to the address of Freddy Rodriguez and deny the allegation contained in paragraph “14” that Freddy Rodriguez was employed by Defendants.
5. Defendants deny each and every allegation of the Complaint not specifically and expressly admitted herein.

II

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim against Defendant upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiff failed to mitigate his alleged damages.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs Complaint is barred by waiver, estoppel, and unclean hands.

FOURTH AFFIRMATIVE DEFENSE

Plaintiffs Complaint is barred because of failure to exhaust administrative remedies.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff is exempt from the overtime provisions of the Fair Labor Standards Act pursuant to the administrative exemption set forth in 29 U.S.C. § 213 and 29 C.F.R. § 541.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff is exempt from the overtime provisions of the Fair Labor Standards Act pursuant to the executive exemption set forth in 29 U.S.c. § 213 and 29 C.F.R. § 541.

SEVENTH AFFIRMAIVE DEFENSE

Plaintiff is exempt from the overtime provisions of the Fair Labor Standards Act pursuant to the outside sales exemption set forth in 29 U.S.C. § 213 and 29 C.F.R. § 541.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff is exempt from the overtime provisions of the Fair Labor Standards Act pursuant to the professional exemption set forth in 29 U.S.C. § 213 and 29 C.F.R. § 541.

NINTH AFFIRMATIVE DEFENSE

Plaintiffs claims are barred by laches.

TENTH AFFIRMATIVE DEFENSE

Plaintiffs claims are barred by applicable statutes of limitations.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiff fails to sufficiently allege that the Fair Labor Standards Act was willfully violated.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiff was not entitled to minimum wage from these answering Defendants.

WHEREFORE, Defendants Iqbal Memon and Muhammed Doria, request that the Complaint be dismissed in its entirety with prejudice and on the merits; that no judgment be entered against these answering defendants; for the reasonable costs, fees and attorney's fees associated with this action; and for any further relief which as to this court may seem just and reasonable.

DATED: 2/2/10
Bronx, NY

/s/ Richard D Lamborn
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